IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.775 OF 2006
WITH
CIVIL APPLICATION NO.1056 OF 2006

Santosh Appa Gavade ..Appellant

V/s.

Shivappa Shankar Niljagi and others ..Respondents

Mr.Sandesh D.Patil, advocate for appellant

Coram : D.G.Karnik, J

Date : 9th November, 2006

P.C.

1. Heard learned counsel for the appellant. This appeal is directed against the interlocutory order passed by the Lower Appellate Court granting an injunction during the pendency of the appeal.

2. The respondents claim to be tenants of the suit property. They filed a suit for injunction restraining the appellant from disturbing their possession. The Trial Court dismissed the suit on the preliminary ground that the property being a trust property the provisions of the Bombay Tenancy And Agricultural Lands Act (for short the Act) are

not applicable and therefore, suit was not maintainable. In my opinion, Section 88(b) of the Act only exempts trust from certain provisions of Act and not all the provisions of the Act. The trial Court therefore, erred in dismissing the suit for injunction. The lower appellate Court on perusal of record has held that the respondents had made out prima facie case that they were in possession of the property. In the circumstances, I see no error in the decision of the appellate Court in admitting the appeal and granting interim relief pending its final decision. There is thus, no merit in this appeal which is hereby dismissed summarily.

(D.G.Karnik, J.)